FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 3 1945
CHARLES ELMORE CROPLEY
CLERK

No. 279

In the Supreme Court of the United States

OCTOBER TERM, 1944

CANADIAN AVIATOR LIMITED, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Summary of argument	3
Argument:	
Petitioner's libel was properly dismissed for failure to state a cause of action for which the United States has consented to be sued	6
I. The holding of the court below that a public vessel must be the physical instrument by which damage was caused is correct	6
A. Legislative history	7
B. Adjudications under the act and similar statutes	12
C. Principles of liability *in rem* do not support recovery here under the Public Vessels Act	17
D. Considerations of policy militate against the broader coverage urged by petitioner	20
II. The libel fails to state a cause of action involving the negligence of a public vessel of the United States	22
Conclusion	24
Appendix A: The Public Vessels Act	25
Appendix B: The Suits in Admiralty Act	28
Appendix C: Notice to Mariners No. 3	31

CITATIONS

Cases:	
Blackfeather v. *United States*, 190 U. S. 368	22
Coamo, The, 267 Fed. 686	15
Coastwise Transp. Corp. v. *United States*, 43 F. (2d) 401	12, 15
Dobson v. *United States*, 27 F. (2d) 807, certiorari denied, 278 U. S. 653	14
Harding Highway, The, 53 F. (2d) 938	12, 14, 15
Lake Monroe, The, 250 U. S. 246	18
McCormack Sand & Gravel Corp. v. *United States*, 1938 A. M. C. 1569	12, 14, 15

624008—45—1

Cases—Continued. Page

New England Maritime Co. v. *United States*, 55 F. (2d) 674, aff'd *sub nom. United States* v. *Gould*, 73 F. (2d) 1016 ... 15
O'Neal v. *United States*, 11 F. (2d) 869 ... 14
Osceola, The, 189 U. S. 158 ... 4, 13
Pedersen v. *United States*, 14 F. Supp. 1008 ... 14
Porello v. *United States*, 53 F. Supp. 569 ... 15
President Madison, The, 17 F. (2d) 526 ... 13
Queen Ins. Co. v. *Globe & Rutgers Fire Ins. Co.*, 278 Fed. 770, aff'd 282 Fed. 976, 263 U. S. 487 ... 22
Sarnia, The, 261 Fed. 900 ... 15, 16
Schillinger v. *United States*, 155 U. S. 163 ... 22
Standard Oil Co. v. *United States*, 267 U. S. 76 ... 15, 22
United States v. *Michel*, 282 U. S. 656 ... 22
United States v. *Sherwood*, 312 U. S. 584 ... 6, 22
Vera Cruz, The (No. 2), 9 L. R. Prob. Div. 96 ... 4, 12
Western Maid, The, 257 U. S. 419 ... 18
Westmoor, The, 27 F. (2d) 886 ... 13

Statutes:

Act of December 28, 1922, 42 Stat. 1066 ... 9
Admiralty Court Act, 1861, 24 Vict. c. 10, § 7 ... 12
Public Vessels Act of 1925 (43 Stat. 1112–1113; 46 U. S. C. 781–790):
Sec. 1 ... 6, 8, 19, 25
Sec. 2 ... 5, 10, 17, 18, 19, 25
Sec. 3 ... 10, 26
Sec. 4 ... 26
Sec. 5 ... 27
Sec. 6 ... 27
Sec. 7 ... 27
Sec. 8 ... 27
Sec. 9 ... 27
Sec. 10 ... 27
Rev. Stat., Wis. 1898, §3348 ... 13
Shipping Act of 1916, Sec. 9 ... 18
Suits in Admiralty Act, 1920 (41 Stat. 525–526; 46 U. S. C. 741–752) ... 5
Sec. 2 ... 17, 19, 28
Sec. 3 ... 18, 19, 29

Miscellaneous:

66 Cong. Rec. 2087, 2088, 3560 ... 11
H. R. 6989 ... 10
H. R. 9535 ... 7, 10
H. Rep. No. 913 (68th Cong., 1st Sess.) ... 8, 10, 20
S. Rep. No. 941 (68th Cong., 2d Sess.) ... 8, 10, 20
Sutherland, *Statutory Construction* (3d Ed. 1943), § 5202 ... 20

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 279

CANADIAN AVIATOR LIMITED, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the District of New Jersey (R. 4–5) is reported at 52 F. Supp. 211. The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 7–22) is reported at 142 F. (2d) 709.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Third Circuit was entered on May 2, 1944 (R. 22). The petition for a writ of certiorari was filed on July 21, 1944

and was granted on October 9, 1944 (R. 24). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Public Vessels Act of 1925 authorizes a libel *in personam* in admiralty against the United States to recover damages sustained by a privately owned vessel which, while complying with an order of the United States naval authorities to follow directly astern of a public vessel of the United States, collided with a submerged wreck.

STATUTES INVOLVED

The Public Vessels Act of 1925 (43 Stat. 1112–1113; 46 U. S. C. 781–790), and the relevant portions of the Suits in Admiralty Act of 1920 (41 Stat. 525–526; 46 U. S. C. 741–752), are set forth in the Appendix, *infra*, pp. 25–30.

STATEMENT

On August 4, 1942, petitioner, owner of the Canadian steamship *Cavelier*, filed a libel *in personam* in admiralty against the United States in the United States District Court for the District of New Jersey, seeking to recover for damages to the *Cavelier*. The libel in substance alleged that the *Cavelier*, while voyaging in 1942 between Canada and Jamaica on a route fixed by United States naval authorities, was ordered by them to enter

Delaware Bay; that while approaching the Bay the *Cavelier* received further orders from the naval authorities to enter the Bay by following directly astern of the naval patrol boat *YP 249*, a public vessel of the United States; that while following directly astern of the *YP 249* as instructed, the *Cavelier* struck a submerged wreck and sustained serious damages; and that the collision with the wreck and resultant damages "were due solely to the fault and negligence of the United States vessel *YP 249* and those in charge of her" (R. 1–3).

On August 17, 1942, the United States appeared specially and excepted to the libel on the ground that it failed to state a cause of action for which the United States had consented to be sued, and that the libel failed to state a cause of action within the meaning of the Public Vessels Act (R. 3–4). The District Court ruled that the damages to the *Cavelier* were caused not by the *YP 249*, but by the negligence of its officers (R. 4–5), and on June 22, 1943, entered a decree sustaining the exceptions and dismissing the libel (R. 5–6). On appeal, the Circuit Court of Appeals for the Third Circuit affirmed (R. 7–15, 22), Judge Biggs dissenting (R. 15–22).

SUMMARY OF ARGUMENT

I

The Public Vessels Act, the sole basis for the suit at bar, waives sovereign immunity only if the damages for which recovery is sought are "caused

by a public vessel of the United States." There is not here involved that tortious use of a public vessel *qua vessel* which is made actionable by that Act.

A. The Committee reports and Congressional debates preceding the passage of the Act demonstrate a predominate concern with cases of collision involving Government vessels. The original bill, which provided for suits only for collisions, was indorsed by the interested department heads, and the action of the committees in attaching the departmental correspondence to their reports on the later bill (containing the coverage phrase ultimately enacted) indicates that no major enlargement of the scope of waiver was intended or contemplated. The committee reports on the later bill mention no type of claim other than collision.

B. The words of limitation in the Act—"damages caused by a public vessel"—find a close analogy in English and American statutes making actionable "damages done by a ship," which have consistently been construed to require that the ship be the physical cause of the injury. *The Vera Cruz* (No. 2), 9 L. R. Prob. Div. 96; *The Osceola*, 189 U. S. 158. Decisions under the Public Vessels Act permitting recovery in "swell damage" and "crowding" cases, which reach the outer limits of the Act's coverage, do not support

the extension sought here. Unlike the situation in those cases, the damage to the *Cavelier* was not basically caused by a public vessel; the same result would have occurred if the erroneous course had been set for the *Cavelier* by radio or otherwise.

C. Section 2 of the Act, which provides that suits thereunder shall be subject to and proceed in accordance with the Suits in Admiralty Act of 1920 "in so far as the same are not inconsistent" with the 1925 Act, does not authorize a suit wherever one could have been brought under the earlier act. The incorporation here is procedural only; for to the extent that the substantive scope of the two acts would otherwise differ, the 1925 Act would be "inconsistent" with the 1920 Act. That the scope of the two statutes is not coextensive is to be gathered from the use of markedly different words of coverage.

D. Strong considerations of policy support the decision below. To impose liability in the facts at bar might extend the Act to all cases of damage to ships in convoy resulting from a faulty course set in time of war by officers aboard naval vessels, whether the stern of the public vessel were used to mark the course (as in the instant case) or other navigational guides were used. Such an enlargement of the Act's application should not be made without a clearer manifestation of Congressional purpose than the Act now contains.

II

The libel fails to allege or demonstrate that any duty was assumed or owing by the *YP 249* to the *Cavelier*. In the absence of a showing of a duty to the *Cavelier*, there could not be negligence on the part of the *YP 249*. The libel was therefore properly subject to dismissal for this reason also.

ARGUMENT

PETITIONER'S LIBEL WAS PROPERLY DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION FOR WHICH THE UNITED STATES HAS CONSENTED TO BE SUED

I. THE HOLDING OF THE COURT BELOW THAT A PUBLIC VESSEL MUST BE THE PHYSICAL INSTRUMENT BY WHICH DAMAGE WAS CAUSED IS CORRECT

The suit at bar being against the United States, it cannot be maintained in the absence of a statutory waiver of sovereign immunity. *United States* v. *Sherwood*, 312 U. S. 584, 586. Petitioner seeks to draw the requisite waiver from the Public Vessels Act of 1925, Section 1 of which provides that "a libel *in personam* in admiralty may be brought against the United States * * * for damages caused by a public vessel of the United States" (Appendix, *infra*, p. 25). The words "for damages caused by a public vessel" constitute a limitation on the statutory waiver of immunity, and the court below in dismissing petitioner's libel gave effect to those words of

limitation in holding that the Act does not extend "beyond those cases in which the vessel itself was the physical instrument by which the damage was done"[1] (R. 11). Petitioner, however, would disregard the fact that the United States has consented only to libels "for damages caused by a public vessel", and suggests in substance that liability is incurred under the Act whenever damages are caused by the negligence of the officers or crew of a public vessel or other officers who cause her to be used in a particular manner. Nothing, however, in the legislative history of the Act, the course of adjudication pursuant thereto, or the considerations of policy motivating its adoption, supports petitioner's attempt to extend the Act's coverage beyond the limitation declared by the court below. In the ordinary and intended meaning of the Act's words of limitation, we submit, the negligence of government servants (not ordinarily actionable against the United States) creates liability under the Act only when a public vessel is the physical agent by which damages are caused.

A. Legislative History

H. R. 9535, the bill which became the Public Vessels Act, contained the coverage provisions

[1] The district court, in dismissing the libel, similarly held that the public vessel involved was not the "proximate" or "efficient cause" of the damage (R. 5).

624008—45——2

here involved: "damages caused by a public vessel of the United States." The opening paragraph of the report on that bill by the House Committee on Claims (which was adopted *in toto* by the Senate Committee on Claims) stated that:

> The chief purpose of this bill is to grant private owners of vessels and of merchandise a right of action when their vessels or goods have been damaged *as the result of a collision with any Government-owned vessel*, though engaged in public service, without requiring an application to Congress in each particular instance for the passage of a special enabling act. [H. Rep. No. 913 (68th Cong., 1st Sess.) p. 1; S. Rep. No. 941 (68th Cong., 2nd Sess.) p. 1 (Emphasis supplied).]

Further analysis of the report reveals that the Committee, in drafting the bill, had in mind only cases of direct physical impact by collision.[2] Thus, in describing the need for the proposed legislation, the report (p. 2) points to the fact that whereas "no judicial relief is available to a ship owner for damages caused by the negligent navigation of a public vessel of the United States," the United States, not suffering from such disability, "has

---

[2] Such analysis makes clear that the use of the word "chief" to qualify the word "purpose" in the first line of the opening paragraph was intended by the Committee simply to note awareness of the fact that Section 1 of the Act also permitted compensation for towage and salvage services rendered.

its day in court * * * and, when the Government vessel is found to have been at fault, refuses to pay the damages sustained by the private owner."[3] Again, in referring to the "only general legislation covering the subject matter of the pending bill"—the Act of December 28, 1922, authorizing the Secretary of the Navy to adjust claims not exceeding $3,000—the report (p. 5) characterizes that act as "wholly inadequate, since the damages in collision cases are usually very large in amount." Furthermore, in describing the English practice as regards "the very claims now under consideration," the report (p. 5) discusses "the case of a collision between a British public vessel and the ship of a subject or foreigner" but mentions no other type of claim. Manifestly, as the court below observed with respect to the Committee reports (R. 10), there is not "the faintest suggestion in [them] that the bill would effect a general waiver of the sovereign immunity from suit on all claims for damages resulting from the negligence of the personnel of a public vessel even though the vessel itself was not the physical instrument which did the injury."

---

[3] A result which, of course, could only occur in collision cases causing mutual damage. See also the report at p. 4: "Ship owners, whose vessels have suffered a collision with any Government-owned ship * * * must apply to Congress for a special enabling act before suit can be brought in the admiralty courts."

Petitioner seeks to emphasize (Br. 14–15) the replacement of an earlier bill (H. R. 6989, allowing suits for "collisions" caused by public vessels) by the later bill H. R. 9535 (authorizing suits for "damages" caused by public vessels) which became the Act. However, comparison of these bills and reference to the Committee reports shows that the primary reason for supplanting the earlier bill was to incorporate changes not here relevant, suggested by department heads in correspondence with the Committee concerning the earlier bill.[4] Indeed, this very correspondence was incorporated in the Committee reports on H. R. 9535 (the later bill) with the express statement (p. 6) that the departmental letters endorsed the new bill. And in the debates the sponsors expressly stated, on the basis of this correspondence approving a waiver of immunity confined by the terms of H. R. 6989 to collision cases, that H. R. 9535

[4] Thus, as the Attorney General suggested, a requirement for securing the consent of the Attorney General prior to institution of suit was deleted; the interest provision in Section 2 was modified to prevent interest from running until after judgment; and Section 3 was amended to require the posting of security by a cross libellant. Similarly, in accordance with the recommendation of the Secretary of State, the bill was given an earlier retroactive date, the courts rather than the State Department were vested with power to determine whether particular foreign countries granted reciprocity, and the phrase "head of any independent establishment" was added to Section 4. (See H. Rep. *supra*, pp. 6–7, 11–13; S. Rep. *supra*, pp. 6–7, 11–13).

had the approval of the governmental departments (66 Cong. Rec. 2088, 3560). As the court below stated (R. 11), "certainly if Congress had contemplated that H. R. 9535 would permit suit against the United States for all damages resulting from the negligence of naval personnel aboard public vessels, it would not have used this correspondence as it did, but would have submitted the new bill to the department heads for their views upon the desirability of such a radical departure from historic sovereign immunity."[5] The substitution of "damages" for "collision," in the context of these legislative materials, is more plausibly explained by the draftsman's desire for greater accuracy of statement (i. e., the suit is "for" the damages re-

[5] Petitioner's reliance on other statements of the Congressional sponsors of the bill to demonstrate an intention substantially to widen the coverage of the Act beyond that proposed in H. R. 6989, is misplaced. The remarks of Senator Bayard (66 Cong. Rec. 3560, quoted at pp. 15–16 of Pet. Br.) in no way appear to be in conflict with the interpretation given to the Act by the court below. The isolated remark of Representative Underhill (66 Cong. Rec. 2087) that the bill would allow suits for damages inflicted "by collision or other fault of Government vessels and Government agents" cannot be accorded material significance in view of the foregoing overwhelming evidence of an intention to restrict the Act's coverage to cases of physical impact. It is to be noted that even petitioner disclaims the literal meaning of Representative Underhill's reference to the fault of Government agents by stating (Pet. Br. 16–17) "We have not contended that the Act authorizes suit 'for all damages resulting from the negligence of Naval personnel aboard public vessels.'"

sulting from the collision, not "for" the collision).[8]

B. Adjudications Under the Act and Similar Statutes

As the court below noted (R. 11), Congress, in using the phrase "damages caused by a public vessel" was not using language unfamiliar to the law. In *The Vera Cruz* (No. 2), 9 L. R. Prob. Div. 96, a statute making actionable "damage done by any ship" (Admiralty Court Act, 1861, 24 Vict. c. 10 s. 7) was under consideration, in an action for the death of a master of a vessel who was thrown into the water and drowned following a collision between that vessel and the *Vera Cruz*. Denying recovery, the Master of the Rolls held that the statute applied only where "a ship was the active cause, the damage being physically caused by the ship" (p. 99), and in the same case Judge Bowen stated (pp. 100–101):

---

[8] The majority of the court below suggested that (R. 10) "this change in the phraseology of the bill was intended to extend the waiver of immunity beyond cases of actual collision to those cases in which the vessel is the physical cause of the injury even though it does not come into actual physical contact with the injured object." The court cited, as examples of the broader coverage, *Coastwise Transp. Corp.* v. *United States*, 43 F. (2d) 401 (D. Me.), in which a Navy tug pushed or pulled its tow onto a reef; *The Harding Highway*, 53 F. (2d) 938 (C. C. A. 3), where a Government-owned dredge crowded a ferryboat into a jetty; and *McCormack Sand & Gravel Corp.* v. *United States*, 1938 A. M. C. 1569 (E. D. N. Y.), where a destroyer set up swells which damaged scows.

> "Shortly, the question is, whether this is a claim for damage done by a ship, and I think that the history of the law on this point proves that it is not. Apart from that, however, the obvious meaning of the act leads to the same conclusion—for the act gives a claim for compensation for damages done by the ship—this, and this only, is the cause of action. 'Done by a ship' means done by those in charge of a ship, with the ship as the noxious instrument."

This Court in *The Osceola,* 189 U. S. 158, similarly construed a state statute providing *in rem* liability "for all damages arising from injuries done to persons or property by * * * [a] ship" (Rev. Stat., Wis., 1898, Sec. 3348). Denying recovery to a seaman for injuries suffered on his own vessel as a result of the master's negligence, this Court stated (189 U. S. at 176):

> The statute was doubtless primarily intended to cover cases of collision with other vessels or with structures affixed to the land, and to other cases where the damage is done by the ship herself, as the offending thing * * * through the negligence or mismanagement of the ship by the officers or seamen in charge * * *.

See also *The Westmoor,* 27 F. (2d) 886 (D. Ore.); *The President Madison,* 17 F. (2d) 526, 528 (W. D. Wash.). The view that under the Public Vessels Act the vessel must be the physical instrument

by which the damage is done is also reflected in *Dobson* v. *United States*, 27 F. (2d) 807 (C. C. A. 2), certiorari denied, 278 U. S. 653, which quotes from *The Osceola*, and in *O'Neal* v. *United States*, 11 F. (2d) 869 (E. D. N. Y.), affirmed *per curiam*, 11 F. (2d) 871 (C. C. A. 2), which quotes from *The Vera Cruz*. See also *Pedersen* v. *United States*, 14 F. Supp. 1008, 1009, where it is said of the Act: "This language [for damages caused by a public vessel] and similar language has been construed to mean damage inflicted by the vessel or its appurtenances."

The court below noted (fn. 3, R. 10–11) that the physical instrumentality test is consistent with the allowance of recovery for damages caused when a public vessel creates an imminent threat of collision, crowding a second ship out of her channel into an obstruction (*The Harding Highway*, 53 F. (2d) 938 (C. C. A. 3)), or where damage results from swells negligently set up by a public vessel (*McCormack Sand & Gravel Corp.* v. *United States*, 1938 A. M. C. 1569 (E. D. N. Y.)). The court observed (R. 10) that in these cases the public vessel, while it did not come into actual physical contact with the injured object, nevertheless was the physical agent creating the injury: in the *McCormack* case the inanimate object under propulsion imparted the force of its momentum by way of an intervening physical medium; in the *Harding Highway*, the government vessel through faulty navigation crowded the private vessel into an obstruction "in an endeavor to avoid a headon

collision with possible loss of life to her passengers." The Government did not raise any jurisdictional defense in *The Harding Highway* and does not now suggest a rule which would recognize liability under the Act only when a ship in imminent peril because of the improper presence of a public vessel in its course elects to receive the direct impact of the public vessel.[7] It does submit, however, that nothing in the language or history of the Act shows a Congressional intention to depart from the established principles of liability in admiralty, operative when loss is said to be caused by a vessel.[8]

In each of the foregoing cases the proximity or physical force of a public vessel directly caused

[7] Other prior decisions under the Act cited by petitioner (Br. pp. 10–12) are not in point. *New England Maritime Co.* v. *United States*, 55 F. (2d) 674 (D. C. Mass.), affirmed sub nom. *United States* v. *Gould*, 73 F. (2d) 1016 (C. C. A. 1), involved an actual collision, and the only question considered by the Court was whether the Act allows suits for damages to persons as well as property. In *Coastwise Transportation Corp.* v. *United States*, 43 F. (2d) 401 (D. C. Me.), a dubious decision even on the merits (cf. *The Sarnia*, 261 Fed. 909 (C. C. A. 2); *The Coamo*, 267 Fed. 686 (C. C. A. 2)), a private vessel attached by a towline to a Navy tug under hire to the owners of the private vessel struck a reef. In *Porello* v. *United States*, 53 F. Supp. 569 (S. D. N. Y.), the issue was whether a stevedore injured on a public vessel could sue under the Act. The opinion does not disclose the cause of the stevedore's injury.

[8] *Standard Oil Co.* v. *United States*, 267 U. S. 76, cited by petitioner (Br. p. 7) as closely paralleling the situation *sub judice*, merely held that the loss of a seized vessel, oc-

the damage. In the instant situation, on the other hand, the moving factor was the actions of naval authorities whose directions the *Carelier* was following. These directions employed the patrol boat *YP 249* as the means of designating a course. The use of the boat instead of a lighthouse or other stationary marker was incidental in the occurrance of the damage to the petitioner's vessel. As the court below suggested (R. 15), the result would have been no different had the *Carelier* been directed in its erroneous course by radio or by a naval officer sent aboard the *Carelier* itself. Cf. *The Sarnia*, 261 Fed. 900 (C. C. A. 2).

If the *Carelier* had been told by the naval authorities to follow a privately owned vessel proceeding into Delaware Bay and had struck the wreck while so doing, surely the private vessel could not have been charged as the cause of the damage. The efficient cause was the erroneous course set for the *Carelier* by the naval authorities, not the means selected to mark that course. The patrol boat *YP 249* here functioned merely as a means for conveying to the *Carelier* the course it should take in entering Delaware Bay. We submit that the formulation and transmission of an erroneous instruction or order does

---

curring during the seizure and while she remained under the control of a naval officer, resulted from a "war risk" under a policy of insurance. There is no hint in the decision that the warship there involved was the "cause" of the loss. Indeed, the warship had been last sighted 400 miles away from the location of the loss.

not constitute a tortious use of the instrument of transmission—here the patrol boat.[2]

C. Principles of Liability in Rem Do Not Support Recovery Here Under the Public Vessels Act

Petitioner contends that the Act "contemplates liability on *in rem* principles" (Pet. Br. 17), and argues that the libel is maintainable because the *YP 249* "physically, by her own movements, negligently directed the movements of the *Cavelier*" (Pet. Br. 20). Even assuming that the conclusion would follow from this premise, the premise is wholly untenable.

Petitioner points to Section 2 of the Act which provides that suits thereunder "shall be subject to and proceed in accordance with the provisions" of the Suits in Admiralty Act of 1920 "in so far as the same are not inconsistent herewith," and petitioner contends that this substantively incorporates into the Public Vessels Act Section 3 of the Suits in Admiralty Act which provides in part:

> If the libelant so elects in his libel, the suit may proceed in accordance with the

[2] The extremes to which the construction contended for by petitioner might lead may be suggested by a slight alteration in the facts of this case: for example, if the course set by the *YP 249* for the guidance of the *Cavelier* had been communicated not by the stern of the patrol boat but by markers dropped by it, which were followed by the *Cavelier* after the *YP 249* was out of sight. If the Act should be applied to such a case, it might then be argued that it applied equally to damage resulting from observance of a channel marked by buoys or other navigational aids set by public vessels.

> principles of libels *in rem* whenever it shall appear that had the vessel or cargo been privately owned and possessed a libel *in rem* might have been maintained.

Petitioner concludes, therefore, that whenever a private vessel might be liable *in rem* for the acts of her master or crew, liability *in personam* may be maintained under the Act.

It is evident, however, that the reasons for permitting suit upon *in rem* principles where a Government-owned merchant vessel is involved are inapplicable to the Public Vessels Act. Prior to 1920 merchant vessels of the United States could be attached under Section 9 of the Shipping Act of 1916 (*The Lake Monroe*, 250 U. S. 246), whereas a public vessel was never subject to attachment. *The Western Maid*, 257 U. S. 419. Hence it was reasonable for Congress, in eliminating libels *in rem* against merchant vessels to substitute a right to proceed to an *in personam* judgment against the United States on *in rem* or *in personam* principles at the libellant's election (see Section 3 of the Suits in Admiralty Act), but there was no corresponding reason why Congress should have authorized suits on *in rem* principles under the 1925 Act.

Unlike the 1920 statute, which authorizes a libel *in personam* against the United States "in cases where if such vessels were privately owned or operated, * * * a proceeding in admiralty could be maintained" (Sec. 2), the Public Vessels Act authorizes such a libel only where the damage is "caused by a public vessel." This difference in

the substantive provisions of coverage indicates that the incorporation provision of Section 2 of the Public Vessels Act is designed merely to supply a procedure for the trial of suits authorized by Section 1. This is indeed the only result permissible in view of the clause in Section 2 "in so far as the same are not inconsistent herewith." To the extent that the 1920 Act imposed liability in circumstances excluded from Section 1 of the Public Vessels Act, it would be "inconsistent therewith." Any attempt to broaden the liability imposed by Section 1 of the 1925 Act by a process properly characterized below as "obscure and circuitious" (R. 14) would render Section 3 of the Suits in Admiralty Act controlling rather than the substantive provisions of the Public Vessels Act itself.

Petitioner's intimation (Pet. Br. 18) that the Act is "coextensive" with the Suits in Admiralty Act is unsound. The use of entirely different language in Section 1 of the Public Vessels Act and Section 2 of the Suits in Admiralty Act (each delineating the scope of the Act involved) cannot be attributed to accident, since where Congress wished to adopt the same provisions for both Acts, as in the case of procedure, it did so expressly (Sec. 2 of the Public Vessels Act). To hold the coverage of the two statutes to be identical would impute to Congress a misleading use of wholly different language to express the same thought in closely related statutes. The more reasonable inference is that Congress advisedly used different

words to establish different criteria of liability in the two statutes. See Sutherland, *Statutory Construction* (3d Ed. 1943), § 5202.[10]

D. Considerations of Policy Militate Against the Broader Coverage Urged by Petitioner

To apply the Public Vessels Act to the situation *sub judice* would, particularly during war time, open so wide an avenue of liability on the basis

---

[10] Petitioner cites two excerpts from the Attorney General's Letter to the House Committee Chairman, as authority that the 1925 Act was understood to be "coextensive" with the 1920 Act (Br. 18–19). Certain words omitted by petitioner from the cited excerpts (Br. 19, 22) are fundamental to an understanding of the letter. The full quotation reads "the proposed bill intends to give the same relief against the Government *for damages caused by collision by its public vessels* * * * as is now given against the United States in the operation of its merchant vessels as provided by the Suits in Admiralty Act." (Words omitted by petitioner are in italics.) As to such cases, the two Acts are, of course, coextensive. However, since the Attorney General's letter was addressed to the earlier bill and not to H. R. 9535 (petitioner's intimation to the contrary, Br. 17, is unfounded), the words of coverage now contained in the Act—"for damages caused by a public vessel"—must be substituted for the words "for damages caused by collision." When thus read, the Attorney General's letter would do no more than express the limitation contained in the Act. Similarly, the excerpt from the Attorney General's letter quoted at p. 17 of petitioner's brief must be read in context. This excerpt is taken from a paragraph where the Attorney General was discussing the question of whether the proposed act limited recovery to the value of the vessel. The complete text of the letter appears in H. Rep., pp. 11–13, and in S. Rep., pp. 11–13.

of equivocal language as to cast doubt upon the validity of attributing to Congress so sweeping an intention.

As is public knowledge, war vessels of the United States are and have been widely engaged in convoying private merchant ships on all courses where potential enemy action or defensive measures such as mine fields create hazards beyond the ordinary risks of navigation. The *Cavalier* herself, as the minority decision below observes, was in convoy at the time it incurred damage (R. 21); the waters constituting the entrance to Delaware Bay were mined (*infra*, Appendix C); and sinkings of merchant ships in the Atlantic were near their height. In these circumstances the difficulty of conveying the exact course by radio directions, the risk of enemy utilization of ordinary navigational aids such as lights, markers or buoys, and the impracticability of transferring naval officers in mid-convoy to the bridges of incoming ships quite obviously could render obligatory the use of auxiliary naval craft for the functions here performed by the *YP 249*.

The successful maintenance of this action under the Public Vessels Act would impose potential liability upon the Government for all operations of the type mentioned and for all damage caused by directions and orders issued by naval personnel aboard convoying public vessels. (Cf. Petitioner's

citation of *Standard Oil Co.* v. *United States*, (Br. 7), discussed *supra*, fn. 8). Losses so sustained—e. g., in a situation in which a convoying commander on a public vessel, perhaps to avoid the supposed location of enemy submarines, leads a convoy of merchant vessels into shoal waters—are essentially the result of increased hazards growing out of war.[21] In view of the strict construction to which a statutory waiver of sovereign immunity is entitled (*United States* v. *Sherwood*, 312 U. S. 584, 590; *United States* v. *Michel*, 282 U. S. 656; *Blackfeather* v. *United States*, 190 U. S. 368, 376; *Schillinger* v. *United States*, 155 U. S. 163, 166), a clear Congressional expression of purpose would seem to be necessary to render the Government liable for such risks. We submit that such an intention is not to be inferred from an Act, the legislative history of which shows that it was directed to cases of collision and comparable causes of loss suggested by the cases cited.

II. THE LIBEL FAILS TO STATE A CAUSE OF ACTION INVOLVING THE NEGLIGENCE OF A PUBLIC VESSEL OF THE UNITED STATES

There remains an independent basis for the dismissal of the libel: the fact that it nowhere alleges the violation of any duty owing from the *YP 249* or those in charge of her to the *Cavelier*, upon which negligence, and therefore liability un-

[21] Cf. the description of convoy operations in *Queen Ins. Co.* v. *Globe & Rutgers Fire Ins. Co.*, 278 Fed. 770, affirmed 282 Fed. 976 and 263 U. S. 487.

der the Act, may be predicated.[12] The libel does not state that the directions to the *Cavelier* to follow the *YP 249* emanated from any officer or member of the crew of that vessel (see R. 1–3), and this is conceded in petitioner's brief (p. 21, fn.). Consequently, the sole basis for the alleged cause of action is that the *Cavelier* "received instructions from the United States Naval authorities" not situated on the *YP 249*, to follow the *YP 249* into Delaware Bay (R. 2; Pet. Br. p. 21, n.). But there is no allegation in the libel that any one aboard the *YP 249* undertook to guide the *Cavelier* into the Bay, or was even aware that the patrol boat was being followed by the *Cavelier* for that purpose. Petitioner's allegations that the patrol boat "led the *Cavelier* directly over a submerged wreck" and that her damages "were * * * due to the fault and negligence of the * * * *YP 249* and those in charge of her" (R. 2–3) are mere conclusions since the factual allegations in the libel do not show that the *YP 249* directed the *Cavelier* to follow it.

Since it is not charged that the *YP 249* was under any duty to the *Cavelier*, either to lead it safely into the Bay or to take any other action which it failed to take, there can be no actionable negligence or fault on the part of that vessel. This ground for dismissal of the libel warrants affirmance of the judgment independently of the reasons advanced by the court below.

---

[12] This additional ground was argued in the court below (Br. of appellee in No. 6429, pp. 16–17), but was not passed on in the opinion below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

CHARLES FAHY,
Solicitor General
FRANCIS M. SHEA,
Assistant Attorney General
DAVID L. KREEGER,
Special Assistant to the Attorney General
RALPH F. FUCHS,
BONELL PHILLIPS.

JANUARY 1945.

APPENDIX A

The Public Vessels Act, 43 Stat. 1112–1113 (46 U. S. C. 781–790), provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April, 1920.
>
> SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act

authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

SEC. 3. That in the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: *Provided*, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

SEC. 4. That no officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause

of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

SEC. 5. That no suit may be brought under this Act by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

SEC. 6. That the Attorney General of the United States is hereby authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

SEC. 7. That any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 6 of this Act, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

SEC. 8. Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

SEC. 9. The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators or agents of vessels.

SEC. 10. That the Attorney General of the United States shall report to the Congress at each session thereof all suits in which final judgment shall have been rendered and all claims which shall have been settled under this Act.

APPENDIX B

The Suits in Admiralty Act, 41 Stat. 525 (46 U. S. C. 741–752), provides in part as follows:

> SEC. 2. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such

corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or a corporation mentioned in section 741 of this title may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation given prior to March 9, 1920, in admiralty causes by the United States or the United States Maritime Commission, shall become void and be surrendered and canceled upon the filing of a suggestion by the Attorney Gen-

eral or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 748 of this title.

APPENDIX C

NOTICE TO MARINERS No. 3

(Published by Hydrographic Office, United States Navy, January 21, 1942)

* * * * * *

(151) UNITED STATES—*Caution regarding obstructions and mines.*—Mariners are warned that obstructions or mines exist in the entrances to the harbors on the coasts of the United States and its possessions and that they should not attempt to enter without permission or instruction from the station or patrol vessel.

* * * * * *

(163) DELAWARE BAY ENTRANCE.—*Mines.*—The entrance to Delaware Bay has been mined. All inbound vessels must obtain permission and directions to enter from the naval station vessel southward to Overfalls Lightship, or in bad weather from the Harbor Entrance Control Post.

(See Notices to Mariners 46 (2881), 47 (2950.1) and 51 (3239 of 1941).

U. S. GOVERNMENT PRINTING OFFICE: 1942

SUPREME COURT OF THE UNITED STATES.

No. 279.—October Term, 1944.

Canadian Aviator Limited, Petitioner, vs. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[February 26, 1945.]

Mr. Justice Reed delivered the opinion of the Court.

This writ brings here for review a libel filed by the petitioner, a Canadian corporation and owner of the steamship Cavelier, against the respondent, the United States Government, to recover, under the provisions of the Public Vessels Act, 1925, 43 Stat. 1112,[1] damages alleged to have been suffered by the Cavelier due to the negligent operation of a public vessel of the United States. The United States District Court dismissed the libel on the grounds that it failed to state a cause of action within the Public Vessels Act, 1925, for which the United States had consented to be sued.[2] The Circuit Court of Appeals, one judge dissenting, affirmed the District Court.[3]

The jurisdiction of the United States District Court is based on Section 24 of the Judicial Code. The petition for certiorari was granted, 323 U. S. —, because the Circuit Court of Appeals decided a question of general importance relating to the construction of a federal statute. Jurisdiction of this Court rests on Section 240(a) of the Judicial Code.

On August 4, 1942, the petitioner, the owners of the steamship Cavelier, filed a libel *in personam* in admiralty in a federal district court against the United States to recover for damages to its ship, the Cavelier, alleged to have been caused by the negligent operation of the United States Naval patrol boat, YP 249, a public

[1] 43 Stat. 1112. Section 1 provides: "That a libel in personam in admiralty may be brought against the United States, . . . for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States . . . ."

[2] Canadian Aviator Ltd. v. U. S. A., 1943 A. M. C. 744 (D. C. N. J.).

[3] Canadian Aviator v. United States, 142 F. 2d 709.

vessel of the United States. The libel averred that on July 7, 1942, the Cavelier, while en route from Canada to Jamaica, was ordered by United States Naval authorities to enter Delaware Bay. Upon approaching the Bay, the Cavelier received further instructions from the naval authorities that in her transit of the waters constituting the entrance to the bay, the Cavelier was to follow directly astern of the patrol boat, YP 249, a public vessel of the United States. While following directly astern of the YP 249, as ordered, the Cavelier struck a submerged wreck and sustained serious damages. It was further alleged that the collision with the wreck was due "solely to the fault and negligence of the United States vessel YP 249 and those in charge of her."[4] The libel also stated that petitioner, a Canadian corporation, elected to have its suit proceed in accordance with principles of libels *in personam* and *in rem*; that in similar circumstances the Government of the Dominion of Canada allows nationals of the United States to sue in its courts.

The respondent, United States, appeared specially and sought to have the libel dismissed because it failed to state a cause of action for which the United States had consented to be sued. Petitioner, the libellant, opposed this action, relying on Section 1 of the Public Vessels Act, 1925, which provided that a "libel in personam in admiralty may be brought against the United States . . . for damages caused by a public vessel of the United States . . . ."[5] The federal district court dismissed the libel on the ground that the accident alleged in the libel was not caused by the "*negligent operation of the vessel*," that the vessel was not the "efficient cause" of the accident but that the accident arose from the "*personal and independent negligence of its officers.*" The court held that the Act authorized suit only where the public vessel was the proximate cause of the damage.

The Circuit Court of Appeals affirmed the action of the district

[4] The petitioner's libel alleged the following specific acts of negligence:
"1. She was not in charge of a competent person.
"2. She failed to keep a good look-out.
"3. She failed to guide the *Cavelier* safely through the waters constituting the entrance to Delaware Bay.
"4. She led the *Cavelier* directly over a submerged wreck.
"5. She failed to give the *Cavelier* proper or adequate guidance as to making a safe entrance into Delaware Bay."

[5] See note 1, *supra.*

court on the theory that the phrase in the Act "caused by a public vessel" meant caused by those in charge of the vessel, with the vessel as the "noxious instrument," the "physical instrument," by which the physical damage was done; that in the instant case the physical cause was the submerged wreck. The Circuit Court also held that the Act did not authorize recovery on the admiralty principles of *in rem* liability.

The dismissal by the lower court of petitioner's libel raises three questions for consideration by this Court: Does the Public Vessels Act, 1925, authorize suit against the United States where the public vessel is not the physical cause, the "physical instrument" by which the damage is done; that is, is the Act confined to cases involving the collision situation? If not, does the Act, which authorizes the filing of a libel *in personam* against the United States, authorize recovery in such suit on admiralty principles of *in rem* as well as *in personam* liability? Finally, if the Act authorizes recovery on admiralty principles *in rem* and *in personam*, does petitioner's libel state a cause of action under those principles of admiralty law?

The Public Vessels Act, 1925, was the last in a series of statutes directed generally at affording private vessel owners an adequate and efficient remedy for damages arising from negligent operation of ships owned by the United States.[6] Prior to 1916 a private owner whose ship was damaged by negligent operation of a vessel owned or operated by the United States could not recover from the United States for damages suffered due to the United States' immunity from suit. On the other hand, the United States could sue private owners for damages arising from their negligence. Recognizing the inequities of this situation, Congress passed numerous private acts granting relief in a particular case where a private vessel was damaged by negligent operation of a government ship. The delays coupled with the inconvenience to Congress of handling each claim by separate bill, led Congress to provide in the Shipping Act of 1916, 39 Stat. 728, that Shipping Board vessels while employed as merchant vessels were subject to "all laws, regulations, and liabilities governing merchant ves-

[6] Benedict, Admiralty (6th Ed.) vol. 1, 437; Robinson, Admiralty, 266; Lord, Admiralty Claims Against the Government, 19 Columbia L. Rev. 467; Borchard, Government Liability in Tort, 34 Yale L. J. 1, 35-41; 39 Yale L. J. 1189.

sels" regardless of the fact that the United States owned or had an interest in them.[7]

In *The Lake Monroe*, 250 U. S. 246, this Court held that this statutory waiver of sovereign immunity from suit subjected Shipping Board merchant vessels to proceedings *in rem* in admiralty. Since the arrest and seizure of a vessel incident to an admiralty proceeding *in rem* proved embarrassing, Congress, in 1920, adopted the Suits in Admiralty Act, 41 Stat. 525,[8] which provided generally that a "libel in personam" for damages could be filed against the government in any case where if the government merchant vessel were privately owned or operated a "proceeding in admiralty" could be maintained, Section 2; but that vessels subject to suit under the Act should not be subject to seizure or arrest, Section 1. Although Section 2 of the Act limited suit to the "filing of a libel in personam," this Court interpreted the provisions of Section 3 of the Act to authorize recovery in such suit on admiralty principles of *in rem* as well as *in personam* liability.[9] *Eastern Transportation Co.* v. *United States*, 272 U. S. 675. The Act also provided that the United States should be

---

[7] Section 9 provides, in part, 39 Stat. 730-31:

"Every vessel purchased, chartered, or leased from the board . . . while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein."

[8] 41 Stat. 525-26, Sec. 1: "That no vessel owned by the United States . . . or in the possession of the United States . . . and no cargo owned or possessed by the United States shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions . . . .

"SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. . . ."

[9] 41 Stat. 526: "That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. . . . If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not prevent the libelant in any proper case from seeking relief in personam in the same suit. . . ."

entitled to the benefits of all exemptions and of all limitations of liability accorded by law to owners, charterers, operators or agents of vessels. Section 6.[10]

At the time the Suits in Admiralty Act was being considered by Congress, it was proposed to extend its coverage to include "public vessels" as well as merchant vessels of the United States. Apparently fearing that such an extension of the scope of the bill would delay passage, the Suits in Admiralty Act was adopted, its provisions being confined to "merchant vessels."[11]

After the introduction of several bills[12] dealing with suits against public vessels, Congress, in 1925, adopted the Public Vessels Act, 43 Stat. 1112. It provided that a "libel in personam in admiralty may be brought against the United States . . . for damages caused by a public vessel of the United States." Section 1.[13] Venue of such suits is laid in the district court for the district "in which the vessel or cargo charged with creating the liability is found within the United States."[14] Section 2. It was also provided that suits under the Act "shall be subject to and proceed in accordance with the provisions of . . . [Suits in Admiralty Act, 1920, 41 Stat. 525] or any amendment thereof, in so far as the same are not inconsistent herewith . . . ."[15] The Act also specified that no suit may be brought by a national of a foreign government unless said foreign government, under similar circumstances allows nationals of the United States to sue in its

[10] 41 Stat. 527: "SEC. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels."

[11] Hearings of the House Committee on Judiciary, S. 3076 and H. R. 7124, Nov. 13, 1919, 66th Cong., 1st Sess., at p. 7.

[12] H. R. 13591, April 13, 1920, 66th Cong., 2d Sess.; H. R. 6053, February 14, 1924, 68th Cong., 1st Sess.; H. R. 9075, May 5, 1924, 68th Cong., 1st Sess.; H. R. 9535, May 29, 1924, 68th Cong., 1st Sess.

[13] See note 1.

[14] The Act also contained a special venue provision for cases where the vessel was outside the territorial waters of the United States. 43 Stat. 1112.

[15] 43 Stat. 1112: "SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States. . . . Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled 'An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes,' approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest."

courts, Section 5; Sections 8 and 9 of the Act contain provisions similar to those in the Suits in Admiralty Act, providing that the statute should not be construed to recognize the existence of a lien against a public vessel and conferring on the United States all exemptions and limitations of liability accorded by law to owners of private vessels.[16]

First: Respondent contends that Section 1 of the Public Vessels Act authorizing suits against the United States "for damages caused by a public vessel" should be construed to apply only in cases where the public vessel is the "physical instrument" by which the "physical damage" is done, e. g. collision, that therefore petitioner's libel does not lie under the Act. Such a construction narrowly limits the Act's relief. We conclude that such a narrow interpretation of the Act is not justifiable. While the general history of the Act as outlined above does not establish that the statute necessarily extends to the non-collision cases in view of the rule of strict construction of statutory waiver of sovereign immunity, *United States* v. *Sherwood*, 312 U. S. 584, 586; *Eastern Transportation Co.* v. *United States*, *supra*, we think Congressional adoption of broad statutory language authorizing suit was deliberate and is not to be thwarted by an unduly restrictive interpretation. *See The Lake Monroe*, 250 U. S. 246; *Nashnik* v. *United States*, 267 U. S. 122, 125-26; *Eastern Transportation Co.* v. *United States*, *supra*; *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231.

In 1924, H. R. 6989 was introduced in the House of Representatives, its provisions being similar[17] to those of the Public Vessels Act as adopted, with this material difference: Section 1 of that bill authorized suit against the United States "for damages caused *by collision* by a public vessel." (Italics added.)

[16] 43 Stat. 1113: "SEC. 8. Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

"SEC. 9. The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels."

[17] H. R. 6989, 68th Cong., 2d Sess., provided: "That a libel in personam in admiralty may be brought against the United States, . . . for damages caused by collision by a public vessel of the United States, ..."

This bill was highly similar to the Public Vessels Act, 1925, 43 Stat. 1112, as finally adopted. A material variance, other than the one mentioned above, was a provision making the consent of the Attorney General a condition precedent to suit under the bill.

On reference to the House Committee on Claims, a substitute bill, H. R. 9535, was reported to the House.[18] This bill provided for suits "for damages caused by a public vessel of the United States." This bill with the latter phrase included subsequently became the Public Vessels Act. This change in the language of the Act prior to its adoption convinces us that Congress intended to authorize suits in other than collision cases. The sponsors of the bill in both houses of Congress understood that it extended to cases where damage was done "by collision, or other fault of Government vessels and Government agents."[19] Moreover, Congressional reports on this bill and the course of discussion in the numerous hearings held on predecessor measures to the present bill, indicates that authority to sue was not to be limited to cases where the vessel was the physical instrument that caused the physical damage.[20]

The use of the phrase "caused by a public vessel" constitutes an adoption by Congress of the customary legal terminology of the admiralty law which refers to the vessel as causing the harm although the actual cause is the negligence of the personnel in the operation of the ship. Such personification of the vessel, treating it as a juristic person whose acts and omissions, although brought about by her personnel, are personal acts of the ship for which, as a juristic person, she is legally responsible, has long been recognized by this Court. *United States* v. *Brig Malek Adhel*, 2 How. 210, 233-34; *The China*, 7 Wall. 53, 68; *Ralli* v. *Troop*, 157 U. S.

[18] H. Rep. No. 913, May 31, 1924, 68th Cong., 1st Sess.

[19] 66 Cong. Rec. 2087. Representative Underhill, the sponsor of the bill, stated:

"The bill I have introduced simply allows suits in admiralty to be brought by owners of vessels whose property has been damaged by collision or other fault of Government vessels and Government agents."

Similarly, Senator Bayard, in discussing the measure in the Senate, said, 66 Cong. Rec. 3560:

"It would give a person aggrieved because of an accident by reason of the shortcomings of a United States ship the right to go into a district court and prosecute his action. It provides for the appearance of the Attorney General of the United States, and all maritime accidents of any kind resulting from collision, and so on, are taken care of. A great deal of money would be saved to the Government."

[20] H. Rep. No. 913, 68th Cong., 1st Sess., at p. 62; S. Rep. No. 941, 68th Cong., 2d Sess., at p. 3; see also H. Rep. No. 1301, 66th Cong., 3rd Sess., Feb. 7, 1921, see especially letter of the Acting Secretary of the Navy, p. 8; Hearings before Committee on Judiciary of the House of Representatives, on H. R. 9075, 68th Cong., 1st Sess., May 21, 1924, pp. 6, 19, 21, 23, 28, 30.

386, 402-3; *The John G. Stevens*, 170 U. S. 113, 120; *The Barnstable*, 181 U. S. 464, 467. That such was the meaning attributed to this phrase is further evidenced by Section 2 of the Act, relating to venue, which provides that venue shall lie in the district "in which the vessel or cargo charged with creating the liability is found." 43 Stat. 1112. The consent to suit embodied in the Act thus extends to cases where the negligence of the personnel of a public vessel in the operation of the vessel causes damage to other ships, their cargoes, and personnel, regardless of physical contact between the two ships,[21] and where principles of admiralty law impose liability on private parties. There seems no logical reason for allowing recovery for collision and refusing recovery for damages caused by other movements of the offending vessel.

The fact that the Committee reports on the bill state that the "chief purpose" of the Act is to authorize recovery in collision cases, that the departmental letters attached to the report consider principally the "collision" situation, does not require that the statute should be so limited.[22] Respondent relies on *The Osceola*, 189 U. S. 158, in which it was held that a Wisconsin statute imposing liability "for all damages . . . done to persons or property by such ship" did not apply to injuries suffered by a member of a ship's crew arising from the negligence of the master of the vessel, since the damage was not "done by the ship herself, as the offending thing, ..." 189 U. S. 158, 176. Since that case involved a suit by a member of the crew against his employer-owner of the vessel, the holding in that decision on its facts is clearly inapplicable to the instant case. Moreover, the language in the Wisconsin statute is narrower in scope than that in the Public Vessels Act, 1925, which refers generally to "damages caused by a public vessel." Furthermore, the legislative history of the Public Vessels Act requires a different result in so far as the *Osceola* case interprets the Wisconsin statute to apply only to cases where the vessel is itself the physical cause of the damage. These latter two considerations serve also to distinguish *The Vera Cruz, No. 2*, 9 L. R., Prob. Div. 96 [1884]. Respondent also re-

[21] See Coastwise Transportation Corp. v. United States, 43 F. 2d 461; The Harding Highway, 53 F. 2d 938.

[22] H. Rep. 215, 68th Cong., 1st Sess., pp. 1, 6; S. Rep. No. 941, 68th Cong., 2d Sess., pp. 1, 6.

lies on *Dobson* v. *United States*, 27 F. 2d 807, and *O'Neal* v. *United States*, 11 F. 2d 869. These cases are not apposite on the question under consideration since they also involved suits for damages, for personal injuries sustained by a seaman employee aboard his own ship, against the United States as employer.

Second: Petitioner, evidently relying on Section 2 of the Act, states in its libel that it elects to have the action proceed on principles of *in rem* as well as *in personam* liability.[23] As the Circuit Court of Appeals apparently holds that the Act does not authorize recovery on principles of *in rem* liability because of the statutory denial of a maritime lien, we turn to a consideration of this holding. Does the Public Vessels Act which authorizes filing of a "libel in personam" authorize the courts to apply principles of *in rem* as well as *in personam* liability in admiralty?[24] As was indicated, p. 4 *supra*, this Court held that the Suits in Admiralty Act, which also authorizes filing of a "libel in personam" authorizes the courts to grant judgment on *in rem* as well as *in personam* principles, except that the government vessel was not subject to seizure or arrest. Section 3 of that Act, "Procedure in cases of libel in personam,"[25] specifically authorizes a libelant, if he so elects, to proceed in accordance with principles of libels *in rem* if it appears that had the vessel been privately owned a libel *in rem* might be maintained; election to so proceed is not to preclude the libelant from seeking relief *in personam* in the same suit. Although the Public Vessels Act does not have a similar provision, Section 2 of the Public Vessels Act expressly provides that "suits shall be subject to and proceed in accordance with the provisions" of the Suits in Admiralty Act, "in so far as the

[23] See Admiralty Rules, Supreme Court, Rule 14:

"In all suits for pilotage or damage by collision, the libellant may proceed *in rem* against the ship and/or *in personam* against the master and/or the owner."

[24] See note 1, *supra*. At the time of the Committee reports on H. R. 9535 (which when adopted became the Public Vessels Act), the courts had not yet interpreted the Suits in Admiralty Act, 41 Stat. 525, to authorize recovery on admiralty principles of both *in rem* and *in personam* liability. See Eastern Transportation Co. v. United States, 272 U. S. 675 (1927). We find no discussion of whether Section 2 of the Public Vessels Act imported both principles into its text. The problem had been adverted to in the Attorney General's letters of opinion to the committees considering the problem. H. Rep. No. 913, p. 12, 68th Cong., 1st Sess.; S. Rep. No. 941, p. 12, 68th Cong., 2d Sess.; Hearings before the Committee on Judiciary of the House of Representatives on H. R. 9075, May 21, 1924, pp. 30, 31 and 34.

[25] 46 U. S. C. § 743; see note 9, *supra*.

same are not inconsistent" with the provisions of the Public Vessels Act.[26] Since there is nothing in the Public Vessels Act that is inconsistent with this provision of the Suits in Admiralty Act, we hold that the incorporation clause applies. Other provisions of the Public Vessels Act support such incorporation. Authority is given to sue generally "in admiralty"; this broad generic term implies a right to invoke principles of *in rem* and *in personam* liability. Furthermore, in *Eastern Transportation Co.* v. *United States*, *supra*, we held that authority to resort to both types of principles of admiralty liability was borne out by the fact that the Suits in Admiralty Act provided that the United States should be entitled to all the exemptions accorded to private persons under admiralty law. We there held:

> The necessary implication is that if, under the Harter Act . . . or the Limitation of Liability Act, . . . the United States as owner of a merchant vessel should not be able to show performance of the conditions upon which such statutory limitations of liability are granted, it must assume the personal liability for negligence in such cases exactly as a private owner would." (272 U. S. 675, 690-91.)

The Public Vessels Act contains the same exemption provision as that in the Suits in Admiralty Act.[27] This interpretation of the Act accords with the broad purpose expressed in the Congressional hearings and reports on the Act.[28] In addition, such an interpretation accomplishes Congress' purpose to grant foreign nationals the same rights as would be accorded our nationals in foreign courts in a similar situation. A narrower interpretation would limit the reciprocal effect of this Act.[29]

Third: Since we hold that the Public Vessels Act was intended to impose on the United States the same liability (apart from seizure or arrest under a libel *in rem*) as is imposed by the admiralty law on the private shipowner, it remains to be considered whether petitioner states a valid cause of action under general principles of admiralty law, *in rem* and *in personam*. Petitioner alleges that the respondent's vessel, having undertaken to guide petitioner's boat, the Cavelier, through the waters at the entrance of the bay, did so in a negligent fashion causing petitioner to strike a sub-

[26] See note 15, *supra*.
[27] See note 16, *supra*.
[28] See note 20, *supra*.
[29] See note 16, *supra*.

merged wreck, that the accident was caused solely by the negligence of YP 249 and its crew. It needs no extended citation of authority to show that where a tug negligently grounds its tow, the tug and its owner are liable for the damages resulting therefrom. *The Quickstep*, 9 Wall. 665; *The John G. Stevens*, 170 U. S. 113; *The Temple Emery*, 122 Fed. 180; *The W. G. Mason*, 142 Fed. 913; *see, The Caspian*, 14 F. 2d 1013; *The Murrell*, 200 Fed. 826; *The Sally McDevitt* v. *The J. W. Paxon*, 24 Fed. 362; *The Rescue*, 74 Fed. 847.[30] The fact that the Cavelier was not fastened to the YP 249 by a tow rope is irrelevant.[31] The libel avers that she was under orders by the naval authorities to proceed directly astern of the YP 249; for all practical purposes she was as firmly fastened to the stern of the YP 249 as if she had been in tow.

The judgment of the ~~district~~ court ~~dismissing the petitioner's libel~~ is reversed, with direction to proceed with consideration of the case on the merits.

circuit

and the cause remanded to the district court.

[30] Benedict, Admiralty (6th Ed.), vol. 1, pp. 363-5, 367-69.

[31] It is clear that tort liability in admiralty does not require physical contact between the offending vessel and its victim. See Leathers v. Blessing, 105 U. S. 626, 630. "Nor is the term 'tort,' when used in reference to admiralty jurisdiction, confined to wrongs or injuries committed by direct force, but it includes wrongs suffered in consequence of the negligence or malfeasance of others, where the remedy at common law is by an action on the case." See also Eastern Transportation Co. v. United States, 272 U. S. 675; In re Fassett, 142 U. S. 479, 485; Phila. W. & B. R. Co. v. Phila. & H. Towboat Co., 23 How. 209, 215-16; The Lyndhurst, 92 Fed. 681; The Kronprinzessin Cecilie, 192 Fed. 27; The Campania, 203 Fed. 855; The Washington Irving, 250 Fed. 797; The Luke, 19 F. 2d 923, aff'd, 19 F. 2d 925; Coastwise Transportation Corp. v. United States, 43 F. 2d 401; The J. C. Hart, 43 F. 2d 566; The Favorita, 43 F. 2d 569.